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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,514	02/25/2002	Robert Metzger	5490-000244	3723
27572	7590	01/19/2006		EXAMINER
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303				WILLSE, DAVID H
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/082,514	METZGER, ROBERT	
	Examiner Dave Willse	Art Unit 3738	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
Period for Reply			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.			
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 			
Status			
<p>1)<input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>07 November 2005</u>.</p> <p>2a)<input checked="" type="checkbox"/> This action is FINAL. 2b)<input type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>			
Disposition of Claims			
<p>4)<input checked="" type="checkbox"/> Claim(s) <u>1,2,4-36 and 38-40</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) _____ is/are withdrawn from consideration.</p> <p>5)<input checked="" type="checkbox"/> Claim(s) <u>24,25,38 and 39</u> is/are allowed.</p> <p>6)<input checked="" type="checkbox"/> Claim(s) <u>1,2,4-23,26-36 and 40</u> is/are rejected.</p> <p>7)<input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8)<input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.</p>			
Application Papers			
<p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input type="checkbox"/> The drawing(s) filed on _____ is/are: a)<input type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner.</p> <p style="margin-left: 20px;">Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p style="margin-left: 20px;">Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p> <p>11)<input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</p>			
Priority under 35 U.S.C. § 119			
<p>12)<input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input type="checkbox"/> All b)<input type="checkbox"/> Some * c)<input type="checkbox"/> None of:</p> <p style="margin-left: 20px;">1.<input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p style="margin-left: 20px;">2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p> <p style="margin-left: 20px;">3.<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p>			
<p>* See the attached detailed Office action for a list of the certified copies not received.</p>			
Attachment(s)			
<p>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.</p>		<p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____.</p>	

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-22, 26, 27, 32, 33, 35, 36, and 40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Moulin, FR 2 734 709 A1: Figures 29-31. Regarding claim 1 and others, the slide 3 is absent in some embodiments (English translation: page 6, line 18), which embodiments comprise a femoral component 1; a tibial component having a monolithic tibial tray 2 defining a tibial bearing surface at, for example, the “stair case pattern” (*ibidem*: page 2, line 30) and a tibial bone engaging surface (*ibidem*: page 5, lines 5-9); a monolithic bearing member 5 having first, second, and third bearing surfaces (*ibidem*: page 5, lines 1-3; sentence bridging pages 3 and 4; page 3, lines 1-13); and a linkage mechanism (*ibidem*: page 6, lines 15-24). Regarding claim 2 and others: page 8, last full paragraph, of said translation. Regarding claim 6 and others: ligament L₁ in Figure 29. Regarding claim 7 and others: rotatable couplings are deemed to be inherent because of the flexibility of the artificial ligaments (*ibidem*: page 9, line 2). Regarding claims 9-11 and others, both the bearing member 5 pivot and the tibial tray 2 pivot (*ibidem*: page 7, lines 12-14) extend from the tibial component and certainly affect movement of the bearing member 5; either pivot is *capable* of being removed, whether or not

such was the intent. Regarding claim 13, the monolithic bearing member 3 or 5 is able to translate in all of the listed directions *relative to the femoral component 1*; attention is also directed to Figures 25-28 and page 6, lines 1-14, of said translation. Regarding claim 35, the bore is viewed as the hole through which the screw (or threaded “bar”) extends (*ibidem*: page 9, lines 2-6); bars are, in fact, explicitly discussed at page 6, lines 21-24, of said translation.

Claims 23, 28-31, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moulin, FR 2 734 709 A1. To replace the fixation of the artificial ligaments **L₁-L₃** to the femoral element **1** and the tibial component **2** by retainers and screws with ball and socket connections would have been obvious to the ordinary practitioner in order to reduce stress concentrations and wear at the screw heads and the ligament ends, with Moulin having been open to other types of securing means (*ibidem*: page 9, lines 2-6).

Claims 24, 25, 38, and 39 are allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 5,534,033: ligament means 62 (Figure 8); column 2, line 32; etc.

The Applicant's remarks have been reviewed. U.S. patent no. 5,002,574 was, in fact, cited in the Advisory Action mailed on October 24, 2005, but for the Applicant's convenience, the patent is re-cited in the instant Office action. Regarding claim 23, Moulin indicates that the ligaments are "similar to conventional artificial ligaments" (page 9, lines 2-3, of the English translation), and conventional ligaments encompass ball-and-socket connections of the sort taught, for example, by May et al., US 5,002,574, and Sawazaki, JP 10-127672 A, and disclosed as having certain advantages (US 5,002,574: column 2, lines 42-47; both English abstracts of JP

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10-127672 A). Regarding claim 32, the Applicant appears to be overlooking ligament L₁ (Figure 29), for example. Other remarks have been addressed in the grounds of rejection presented above.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is 571-272-4762. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Dave Willse
Primary Examiner
Art Unit 3738